No. 76-1823

In the
Supreme Court of the United States

OCTOBER TERM, 1976

28 EAST JACKSON ENTERPRISES, INC.,
Petitioner,

vs.

P. J. CULLERTON, Individually, and as County Assessor, and BERNARD J. KORZEN, Individually, and as Treasurer and Ex-Officio County Collector of Cook County,
Respondents.

On Petition For A Writ of Certiorari To The Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the district court is unreported. The opinion of the Court of Appeals for the Seventh Circuit and the opinion of Mr. Justice Swygert, dissenting in part are reported at 523 F. 2d 439 (7th Cir. 1975), *cert. denied*, 423 U.S. 1073 (1976). The Supplemental Opinion of the Court of Appeals for the Seventh Circuit is reported at 551 F. 2d 1093 (7th Cir. 1977).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

The sole question presented by this Petition is whether an Illinois taxpayer has an absolute right to litigate any case involving state taxation in federal district court.

STATUTES INVOLVED

The pertinent provisions of the Johnson Act, 28 U.S.C. §1341, and the Civil Rights Act, 42 U.S.C. §1983 are set out in the Petition at pp. 3-4.

STATEMENT OF THE CASE

The petitioner is an Illinois corporation owning property subject to the real estate tax law of Illinois. Respondents are local tax officials charged with the assessment and collection of real estate taxes pursuant to Illinois law.[1] The subject matter of this case deals with local real estate taxes assessed against the petitioner for the year 1972, which taxes were payable in 1973.

In late 1973, the petitioner brought a civil rights action under 42 U.S.C. §1983 to enjoin the respondents from applying for the sale of petitioner's property for delinquent 1972 taxes. The petitioner asserted that 28 U.S.C. §§1343 (3) and 1331 supported Federal jurisdiction in the case.

The petitioner's theory for relief was that its real estate assessment was "constructively fraudulent." Illinois

[1] Thomas M. Tully, the present Assessor of Cook County, is the successor in office to Respondent P. J. Cullerton. Edward J. Rosewell, the present Treasurer and Ex-Officio County Collector of Cook County is the successor in office to Respondent Bernard J. Korzen.

courts have defined that term to include assessments of property at a level disproportionately higher than other similar property and have, upon proper proof, given relief therefor. *People ex rel. County Collector* v. *American Refrigerator Transit Company,* 33 Ill. 2d 501, 505, 211 N.E. 2d 694, 697 (1965). However, the district court ruled that petitioner's right to relief in the Illinois courts was not "plain, speedy and efficient" within the contemplation of 28 U.S.C. §1341.

The court of appeals, after a thorough review of Illinois law apposite to the case, reversed the district court. 523 F. 2d 439 (7th Cir. 1975). The taxpayer then petitioned this Court for a Writ of Certiorari, and on January 19, 1976 said Petition was denied. 423 U.S. 1073 (1976). Thereafter, the court of appeals stayed its mandate pending final adjudication of certain state court actions commenced by the taxpayer which involved taxes levied on the same property for the tax years 1972, 1973[2] and 1974.[3]

After the Illinois Supreme Court affirmed the dismissal of the taxpayer's state court action, *28 East Jackson Enterprises, Inc.* v. *Rosewell,* 65 Ill. 2d 420, 358 N.E. 2d 1139 (1976), the taxpayer filed a Second Petition for Rehearing with the court of appeals. The taxpayer maintained that the *Rosewell* decision evidenced an unwillingness on the part of the Illinois Courts to grant eqcitable relief to taxpayers in its alleged circumstances, *i.e.* taxpayers with

[2] The suit seeking injunctive relief as to the 1972 and 1973 real estate taxes was dismissed on January 26, 1977. *28 East Jackson Enterprises, Inc.* v. *Rosewell.* No. 75 CH 6436 (Circuit Court of Cook County, 1977).

[3] Dismissal of the suit seeking injunctive relief as to the 1974 taxes was affirmed by the Illinois Supreme Court. *28 East Jackson Enterprises, Inc.* v. *Rosewell,* 65 Ill. 2d 420, 358 N.E. 2d 1139 (1976).

allegedly insufficient funds to satisfy their real estate tax liability. The court of appeals did not interpret the *Rosewell* decision as barring Illinois taxpayers from obtaining equitable relief in state courts. Rather, the court of appeals in its supplemental opinion noted:

> Indeed, it does not appear that Mr. Justice Shaefer's opinion addresses the issue of what relief is available in such cases. Rather, as the court saw it:
>
> The fundamental question . . .
>
> > concerns the authority of Illinois courts to enter judgments which concededly lack finality because the issues that may be determinative have been deliberately excluded from judicial consideration.
>
> And in response to this, Mr. Justice Schaefer wrote:
>
> > As this case has been shaped, the role of the Illinois judicial system closely resembles that of a master in chancery for the Federal district court. Any judgment that an Illinois court might render would not definitively adjudicate the rights of anyone. The Illinois Constitution does not vest this authority in its judges.
>
> Plaintiff must certainly bear primary responsibility for the Illinois court's refusal to address the point here of interest, *i.e.* whether a "plain, speedy and efficient remedy in a case of wrongful tax assessment is available in the courts of that state for a taxpayer in plaintiff's alleged circumstances. For throughout the state court litigation, plaintiff sought to exclude from consideration the merits of its federal claim. [551 F. 2d at 1095.]

Based upon its interpretation of the *Rosewell* decision, the court of appeals denied the taxpayer's Second Petition for Rehearing. It is that determination which the taxpayer seeks to have this court review by certiorari.

ARGUMENT

I

THE PETITIONER HAD NO RIGHT TO EXCLUDE ITS FEDERAL CLAIMS FROM STATE COURT ADJUDICATION.

It is obvious from the taxpayer's Petition for a Writ of Certiorari that it believes it has an absolute right to litigate *any* case involving state taxation in a federal district court. Such a theory, however, fails to square with the Johnson Act, 28 U.S.C. §1341 (1948). That act bars federal district court injunctions in actions challenging state and local taxes where there is a plain, speedy and efficient remedy available to the taxpayer in the state courts. *Matthews* v. *Rogers,* 284 U.S. 521 (1932); and *Great Lakes Dredge & Dock Company* v. *Hoffman,* 319 U.S. 293 (1943). The rationale underlying the Congressionally mandated federal non-interference in this important area of state sovereignity was concisely stated by Mr. Justice Brennan in his concurring opinion in *Perez* v. *Ledesma,* 401 U.S. 82 (1971), and later cited by this Court with approval in *Lynch* v. *Household Finance Corporation,* 405 U.S. 538 at 542, fn.6 (1972). In his concurring opinion in *Perez,* Mr. Justice Brennan stated:

> The special reasons justifying the policy of federal non-interference with state tax collection are obvious. The procedures for mass assessment and collection of state taxes and for administration and adjudication of taxpayers' disputes with tax officials are generally complex and necessarily designed to operate according to established rules. State tax agencies are organized to discharge their responsibilities in accordance with the state procedures. If federal declaratory re-

> lief were available to test state tax assessments, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law. During the pendency of the federal suit the collection of revenue under the challenged law might be obstructed, with consequent damage to the State's budget, and perhaps a shift to the State of the risk of taxpayer insolvency. [401 U.S. at 127-128, fn. 17.]

This court has recently reaffirmed this principle in *Tully* v. *Griffin, Inc.*, ... U.S. ....., 97 St. Ct. 219, 50 L.Ed. 227 (1976). Holding that New York State courts provided New York taxpayers with a plain, speedy and efficient remedy for challenging a state tax on federal constitutional grounds, this Court stated:

> A federal district court is under an equitable duty to refrain from interfering with a State's collection of its revenue except in cases where an asserted federal right might otherwise be lost . . . . [Citations omitted.] This policy of restraint has long been reflected and confirmed in the congressional command of 28 U.S.C. §1341 that no injunction may issue against the collection of a state tax where the state law provides a "plain, speedy and efficient remedy." [..... U.S. at ....., 97 S.Ct. at 222, 50 L.Ed. 2d at 232.]

Accordingly, it is clear that when the petitioner excluded its federal claims from state court adjudication it precluded the state courts from reaching the merits of the claims presented by the taxpayer in its complaints. See: *28 East Jackson Enterprises, Inc.* v. *Rosewell*, 65 Ill. 2d 420, 358 N.E. 2d 1139 (1976); and *28 East Jackson Enterprises, Inc.* v. *Cullerton*, 551 F. 2d at 1094 (7th Cir. 1977). Cook Cnty. 1977). In addition, by framing its state court actions as it did, the taxpayer not only violated the stay order entered by the Seventh Circuit Court of Appeals on

April 5, 1976,[4] but also foreclosed that court from reaching any determination other than that the Illinois remedy was plain, speedy and efficient.[5]

To justify its "reservation of rights" theory the taxpayer attempts to rely on this Court's decision in *England* v. *Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964). We suggest that the court of appeals correctly interpreted the holding of *England* when it declared:

> Critical to any reliance on *England* is the proper invocation of federal jurisdiction. The mere raising of a federal claim is not enough. For primary federal jurisdiction exists only to the extent Congress has provided, and it is by no means incumbent upon congress to provide a federal forum for the vindication of every federal right. [Citations omitted.] In 28 U.S.C. §1341, Congress decreed that in matters affecting state tax assessments or collections, no federal court shall have jurisdiction so long as a plain, speedy and efficient remedy is available in state court. *This denial of jurisdiction is complete and applies regardless of whether the tax complaint filed invokes a federal claim alone or in conjunction with state claims.* [Citations omitted.] The only concern is whether there is an adequate state court remedy for the federal claims. [551 F. 2d at 1096 (Emphasis Supplied).]

It is apparent that the manner in which the taxpayer framed its state court actions precluded the Illinois courts from adjudicating its federal claims. Since the taxpayer failed to afford the Illinois courts a full opportunity to

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[4] The stay order entered by the court of appeals was based upon its ". . . understanding that in the plaintiff's [petitioner's] state court case it was making the same claims as in its federal case. . . ." *28 East Jackson Enterprises, Inc.* v. *Cullerton*, 551 F. 2d at 1094 (7th Cir. 1977).

[5] *id.* at 1096.

determine its right to relief, the court of appeals properly determined that there was no evidence which would lead the court to conclude that its previous decision, that the Illinois remedy was plain, speedy and efficient, was in error.

II.

THE TAXPAYER'S REMAINING ARGUMENT WAS CONSIDERED BY THIS COURT UPON THE TAXPAYER'S FIRST PETITION FOR A WRIT OF CERTIORARI.

In its first Petition for a Writ of Certiorari filed with this Court, No. 75-755, the taxpayer maintained that the court of appeal's decision in this case was contrary to the mandate of *Township of Hillsborough* v. *Cromwell,* 326 U.S. 620 (1976). The taxpayer once again raises that argument as a reason for this Court to issue a Writ of Certiorari to the Court of Appeals for the Seventh Circuit. It is clear that the taxpayer again does not challenge the substantive manner in which Illinois courts remedy excessive assessments. Rather, the petitioner continues to assert that in Illinois there is no injunctive remedy to correct a "constructively fraudulent" assessment such as that which the taxpayer alleges was placed upon its property. In the alternative, the taxpayer contends that the extent to which the injunctive remedy is available is uncertain.

For the above reason *Hillsborough* is distinguishable. In *Hillsborough* the laws of New Jersey failed to provide a substantive remedy meeting the requirements mandated by this Court in *Sioux City Bridge Co.* v. *Dakota County,* 260 U.S. 441 (1923). The New Jersey courts had held that a taxpayer who was over-assessed must seek to raise the valuation of all property which was under-assessed. That

is not the case in Illinois. The relief contemplated by both *Sioux City* and *Hillsborough* is clearly authorized. See: *People ex rel. Skidmore* v. *Anderson,* 56 Ill. 2d 334, 307 N.E. 2d 391 (1974); and *People ex rel. County Collector* v. *American Refrigerator Transit Company,* 33 Ill. 2d 501, 211 N.E. 2d 194 (1965).[6]

The issue thus raised is whether Illinois courts will afford a taxpayer injunctive relief where that taxpayer is unable to pursue the remedy at law. The respondents contend, as they did when responding to the taxpayer's first Petition, that the answer to the above question is in the affirmative. See: *Clarendon Associates* v. *Korzen,* 56 Ill. 2d 101, 306 N.E. 2d 299 (1973); *LaSalle National Bank* v. *County of Cook,* 57 Ill. 2d 318, 312 N.E. 2d 252 (1973); *Hoyne Savings and Loan Association* v. *Hare,* 60 Ill. 2d 84, 322 N.E. 2d 833 (1974); *Exchange National Bank* v. *Cullerton,* 17 Ill. App. 3d 392, 308 N.E. 2d 284 (1st Dist. 1974); *Euclid Corporation* v. *Tully,* 42 Ill. App. 3d 105, 355 N.E. 2d 659 (1st Dist. 1976); and *Lopin* v. *Cullerton,* 46 Ill. App. 3d 378, 361 N.E. 2d 6 (1st Dist. 1977).

Accordingly, we submit that the court of appeals correctly determined that Illinois law clearly offered the petitioner a plain, speedy and efficient state court remedy. The mere fact that a civil rights action in the federal courts might be a better remedy should not authorize federal intervention into this highly important area of state sovereignty. *Bland* v. *McHann,* 463 F. 2d 21, 29 (5th Cir. 1972), *cert. denied,* 410 U.S. 966 (1973).

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[6] The policy of Illinois law is to require taxpayers claiming excessive valuation to follow the statutory legal remedy set out at Ill. Rev. Stat. 1973, ch. 120, §§675 and 716. That remedy requires payment under protest. Since the petitioner had insufficient funds to pay under protest, the court of appeals properly ruled that the legal remedy was unavailable to petitioner.

CONCLUSION

For the foregoing reasons the respondents respectfully pray that the petition for a Writ of Certiorari be denied.

Respectfully submitted,

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